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December 22, 2008

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VIA EMAIL AND U.S. MAIL

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Chief of Police
Portland Police Bureau
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Portland, OR 97204

Wim Wiewel
President, Portland State University
PO Box 751
Portland, OR 97207

**Re: Traffic Violation Citations Issued by Portland Police Bureau Office J. Pryce to
Reuben Vyn and Peter Welte on November 15, 2008**

Dear Sirs and Madame:

This office represents Reuben Vyn and Peter Welte with respect to an incident that occurred on November 15, 2008, while these gentlemen were riding their bicycles on NE Ainsworth near NE 23rd in Portland. Both men were wrongfully issued traffic violation citations by Portland Police Bureau Officer J. Pryce and will contest those citations at the Multnomah County Circuit Court.



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Mr. Vyn and Mr. Welte request that you contact Officer Pryce and encourage him, for the reasons set forth below, to consider recommending to the court that these citations be dismissed.

Facts

Mr. Vyn and Mr. Welte are both Portland State University students and members of the PSU Cycling Club. They were participating in a Club ride at the time of the incident. Several members of the Club witnessed the incident. NE Ainsworth is one of Portland's designated bike routes despite the fact that it has only one narrow traffic lane in each direction, no bike lane, and allows parallel parking of motor vehicles along the right side of the street.

Mr. Vyn was bicycling approximately three feet to the left of parked cars at approximately 12-15 mph when a Portland Police Bureau officer who identified himself as Officer J. Pryce passed Mr. Vyn moving the same direction in a marked PPB car. When passing Mr. Vyn, Officer Pryce was driving approximately 30 mph and steered his car so that it passed within a foot of the handlebars of Mr. Vyn's bicycle. Mr. Vyn was frightened and alarmed by this action and made a gesture in which he moved his arm laterally to indicate that a wider distance was required for Officer Pryce to execute a safe and legal pass. Upon seeing this gesture, Officer Pryce turned on the car's lights and signaled to Mr. Vyn to stop.

While detaining Mr. Vyn, Officer Pryce informed Mr. Vyn that he should have been riding closer to the cars parked on the right side of the street. Mr. Vyn replied that riding any closer to the cars would subject him to the risk of being hit by an occupant of one of the cars opening a car door. Remarkably, Officer Pryce asked whether such a thing would actually happen and whether it had ever happened to Mr. Vyn. Mr. Vyn responded by telling Officer Pryce that he had indeed experienced riding his bike when someone in a parked car had opened the car's door into his path as he approached. Mr. Vyn explained to Officer Pryce that it was his right under Oregon law to ride in such a way that he does not subject himself to this risk. Mr. Welte photographed the discussion between Mr. Vyn and Officer Pryce.

Office Pryce then requested identification from both Mr. Vyn and Mr. Welte. Mr. Vyn was not carrying state-issued identification at the time, but willingly provided his name, address, and



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other pertinent information. Officer Pryce detained both Mr. Vyn and Mr. Welte for approximately 20 minutes longer while Officer Pryce sat in his car. Upon returning, Officer Pryce informed both men that they were receiving citations for violation of the Oregon Vehicle Code because, according to Officer Pryce, they “had to do it the hard way.” Officer Pryce cited Mr. Vyn for failure to update the address on his driver license (ORS 807.560) and for impeding traffic (ORS 811.130) and cited Mr. Welte for improper position on a highway (ORS 814.070).

Oregon Law Allows Bicyclists to Avoid Riding in the “Door Zone”

“Being doored” is a well-known hazard because it is faced by motorists, bicyclists, and pedestrians alike. Indeed, the *2007-2009 Oregon Driver Manual*,¹ published by the Oregon Department Transportation advises drivers to:

Keep a space between your vehicle and parked vehicles, especially on residential streets with on-street parking. A vehicle door may open in your path or someone may step out of the vehicle or from between parked vehicles.²

The *Oregon Driver Manual* also advises drivers of their responsibilities in opening the door of a parked vehicle.

When you open a vehicle door on either the street or curbside, you must first be sure it is safe to do so. *The open door must not interfere with passing traffic, bicyclists, or with pedestrians.*³

Specifically addressing how to drive legally and safely around bicyclists, the *Oregon Driver Manual* states that:

¹ The *2007-2009 Oregon Driver Manual* is available at <http://www.odot.state.or.us/forms/dmv/37.pdf> (last visited December 7, 2008).

² *Id.* at 55.

³ *Id.* at 56 (emphasis added).



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Drivers need to remember that road hazards not easily seen by drivers of cars or trucks may hamper a bicyclist. These hazards could include potholes, glass, litter, storm grates, and railroad crossings, as well as *opened doors of parked vehicles*. Any of these items could cause a bicyclist to move into your path or to slow down. *Give bicyclists plenty of clearance on the street so they will have room to move around these hazards.*⁴

Indeed, an understanding of the risks created by not allowing adequate distance between vehicles is *basic safety knowledge required of every Oregon driver*.

Being doored is a serious safety hazard for bicyclists. According to a document published by the Portland Police Bureau and other local organizations, occupants of stationary motor vehicles opening vehicle doors in the path of approaching bicyclists is one of the “10 most common [motor] vehicle-bicycle collisions.”⁵

The *2006 Oregon Bicyclist Manual*,⁶ a reference prepared by the Oregon Department of Transportation and to “help ... bicyclists understand how to ride safely and legally on the streets, roads and highways of Oregon,” warns bicyclists of this risk.⁷ It instructs bicyclists to “*Ride far enough away from parked cars so you don’t risk being hit by an opening car door.*”⁸

⁴ *Id.* at 76 (emphasis added).

⁵ p. 44-46. This document titled “Pedestrian and Bicycle Enhanced Enforcement Opportunity Analysis,” and was prepared in 2004 by the Bicycle Transportation Alliance, Portland Department of Transportation, Portland Police Bureau, and Willamette Pedestrian Coalition. It can be found on the City of Portland’s website at <http://www.portlandonline.com/transportation/index.cfm?c=40556&a=99325> (last visited December 7, 2008).

⁶ 2006 is the most recent year for which the *Oregon Bicyclist Manual* is available on the Oregon Department of Transportation website. The *Manual* can be found at http://www.oregon.gov/ODOT/Ts/docs/Bike/2006_Bicycle_Manual.pdf (last visited December 7, 2008).

⁷ *Id.* at 2.

⁸ *Id.* at p. 6 (emphasis added).



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The City of Portland's website, which provides resources for bicyclists, offers similar advice on riding around the city. A document titled "A Guide to Your Ride" advises bicyclists that they "may need to 'take the lane' to avoid being squeezed up against the curb or parked cars by passing motor vehicle traffic."⁹ This document also encourages bicyclists to use designated bicycle routes.¹⁰ The PSU website directs students interested in learning how to get around Portland safely and legally by bicycle to this advice provided by the City of Portland.¹¹

As one might expect, this obvious safety concern is addressed by the Oregon Vehicle Code. It is a violation of the vehicle code to open the door of a vehicle when not safe to do so because it would interfere with the movement of traffic, including pedestrians and bicycles.¹² Additionally, bicyclists are expressly exempted from the general rule requiring them to ride as far to the right as practicable when necessary to avoid roadway hazards.¹³ Under Oregon law, Bicyclists are explicitly permitted to "take the lane," (i.e., position themselves in the middle of a traffic lane to prevent passing) to avoid parked vehicles or when the roadway "is too narrow for a bicycle and [motor] vehicle to travel safely side by side."¹⁴

It is Unsafe and Illegal for a Motorist to Pass a Bicyclist Within a Foot

Officer Pryce's pass of Mr. Vyn within a foot at approximately 30 mph created a substantial risk to Mr. Vyn's safety. The slightest miscalculation by Officer Pryce or other unforeseen event could have caused serious injury or death to Mr. Vyn. Fortunately, Mr. Vyn was able to hold a steady line while being subjected to the fright of this experience because he is an experienced bicyclist. However, if Officer Pryce had passed a child rider or inexperienced adult rider in this

⁹ p. 6. Available at <http://www.portlandonline.com/shared/cfm/image.cfm?id=157558> (last visited December 16, 2008).

¹⁰ *Id.* at 14.

¹¹ See <http://www.bikeshop.pdx.edu/cyclist/index.php> (last visited December 16, 2008).

¹² ORS 811.490(1)(a).

¹³ ORS 814.430(2)(c).

¹⁴ *Id.*



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manner, the startle response created naturally by being within a foot of a car moving at that speed would be much more likely to cause a collision that could kill or seriously injure the bicyclist.

This conduct is prohibited by the Oregon Vehicle Code. It is a violation of the vehicle code to pass another vehicle on the left at less than a "safe distance."¹⁵ Further, a driver is driving carelessly in violation of the vehicle code if he or she drives "in a manner that endangers or would be likely to endanger any person or property."¹⁶ Officer Pryce committed both of these violations in passing Mr. Vyn. Further, Officer Pryce's comments to Mr. Vyn demonstrate a substantial and troubling ignorance of this safety risk and relevant provisions of the Oregon Vehicle Code designed to prevent it.

Officer Pryce's Traffic Stop of Mr. Vyn was Illegal

Both Oregon law and Federal law prohibit a police officer from initiating a traffic stop without reasonable suspicion that a person has committed a crime or traffic infraction.¹⁷ The officer's subjective belief that an infraction has occurred must be objectively reasonable under the circumstances.¹⁸

As discussed above, Officer Pryce approached Mr. Vyn from behind and passed him without making any attempt to initiate a traffic stop or give any other indication that he believed Mr. Vyn had committed a traffic infraction. Officer Pryce's statements after initiating the traffic stop provide ample evidence that he initiated the stop because of the gesture made by Mr. Vyn and not because any other action Mr. Vyn had taken while riding his bike. Further, Officer Pryce's act of passing Mr. Vyn at approximately 30 mph demonstrates that Officer Pryce could not have

¹⁵ ORS 811.410(1)(a).

¹⁶ ORS 811.135(1).

¹⁷ *Terry v. Ohio*, 392 US 1, 21 (1968) (Fourth and Fourteenth Amendments to the U.S. Constitution); *State v. Isley*, 182 Or App 186, 190 (2002) & *State v. Hall*, 339 Or 7, 11-12 (2005) (Article I, Section 9 of the Oregon Constitution and ORS 131.615(1)).

¹⁸ *Id.*



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reasonably believed that Mr. Vyn had committed the traffic infraction for which he was cited since the infraction requires blocking or impeding the reasonable movement of traffic.¹⁹ Officer Pryce initiated the traffic stop of Mr. Vyn in violation of both Oregon and Federal law. Under such circumstances, any evidence of other infractions discovered during the seizure can be suppressed.²⁰

Officer Pryce's Actions Were Vindictive and Violate Portland Police Bureau Policies

The facts stated above, including Officer Pryce's statements to Mr. Vyn during the traffic stop, demonstrate that Officer Pryce issued the citations to Mr. Vyn and Mr. Welte because he was angry about the gesture made by Mr. Vyn, about Mr. Vyn's assertion that he was riding safely and legally under Oregon law and that Officer Pryce's pass was unsafe and unnecessarily endangered Mr. Vyn, and about Mr. Welte's photographing of the traffic stop. Officer Pryce had ample opportunity to observe the behavior of Mr. Vyn while approaching him from behind and while passing him and Officer Pryce gave no indication that he found any violation of the Oregon Vehicle Code at that time. It was not until after Officer Pryce had passed Mr. Vyn and saw the gesture by Mr. Vyn that he decided to initiate a traffic stop and issue citation to Mr. Vyn and Mr. Welte. Simply put, Officer Pryce issued these citations as retribution and not for the purpose of enhancing roadway safety.

Portland Police Bureau's *Manual of Policy and Procedure* notes that a variety of circumstances may cause police officers to retaliate against citizens, including citizens questioning the legality of the officer's conduct.²¹ This policy expressly prohibits retaliation by PPB officers.²² Additionally, the *Manual of Policy and Procedure* provides that PPB officers are required to abide by Federal and State laws and the PPB's rules and regulations.²³ Officer Pryce's illegal traffic stop and his illegal pass both violate this policy.

¹⁹ ORS 811.130(1).

²⁰ *Id.*

²¹ *Portland Police Bureau Manual of Policy and Procedure*, at 68-69.

²² *Id.*

²³ *Id.* at 77.



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Condoning Officer Pryce's Actions Prevents More Portlanders from Bicycling and is Bad Public Policy

As I know you are well-aware, the City of Portland has worked hard to encourage bicycling on its streets because it recognizes that bicycling – for a panoply of reasons too numerous to list here – is a positive mode of transportation beneficial to everyone. As part of its efforts, the Portland Department of Transportation has identified obstacles to more people getting on bikes:

Survey after survey and poll after poll has found again and again that *the number one reason people do not ride bicycles is because they are afraid to be in the roadway on a bicycle*. They are generally not afraid of other cyclists, or pedestrians, or of injuring themselves in a bicycle-only crash. *When they say they are "afraid" it is a fear of people driving automobiles*. This has been documented and reported in transportation literature from studies, surveys and conversations across the US, Canada, and Europe.

This expression of fear is also something that has been heard hundreds, if not thousands of times by city staff in conversations with Portland residents. Any staff person from Portland's Office of Transportation, Portland Parks and Recreation, Metro, and ODOT involved with bicycle projects has repeatedly heard expression of this fear. Staff and employees of local bicycle organizations, clubs and bicycle-oriented businesses have also regularly heard Portland citizens express that their interest in riding a bicycle is countered by fear for their safety.²⁴

Amazingly, the Portland Department of Transportation reports that fully 60 percent of Portlanders do not ride because of the fear of people doing exactly what Officer Pryce did to Mr. Vyn. These people:

²⁴ <http://www.portlandonline.com/transportation/index.cfm?c=44597&a=158497> (last visited December 16, 2008).



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[L]ike riding a bicycle, remembering back to their youths, or to the ride they took last summer on the Springwater, or in the BridgePedal, or at Sun River, and they would like to ride more. But, they are afraid to ride. They don't like the cars speeding down their streets. *They get nervous thinking about what would happen to them on a bicycle when a driver runs a red light, or guns their cars around them, or passes too closely and too fast.*

Make no mistake, drivers who pass bicyclists as Officer Pryce passed Mr. Vyn terrify people on bicycles and keep others off bicycles in Portland. Although ridership in Portland is expanding, actions by drivers such as those taken by Officer Pryce are *the* major reason the *majority* of Portlanders do not ride their bikes around our City.

When Portlanders see that the City's law enforcement officers themselves are exacerbating this safety concern by driving in a way that flagrantly disregards the risk to bicyclists, they will rightfully ask whether the City and its leaders are serious about promoting safe and legal bicycling in Portland. Despite all the bike lanes, bike boxes, and designated bike routes, they will rightfully be ambivalent about riding and fearful when interacting with PPB officers. If they see that the City's leaders have looked the other way or done nothing to address such conduct, they will know that the City is uninterested in enforcing the laws and conduct required to allow safe bicycling.

Request

Mr. Vyn and Mr. Welte did nothing wrong on November 15 and were treated extremely unfairly by Officer Pryce. Officer Pryce's conduct was also illegal, unprofessional, and needlessly endangered Mr. Vyn's life. Yet these gentlemen do not wish to continue the cycle of retaliation with Officer Pryce or to engage in a legal battle over this incident. They are mindful that such conflict could worsen already strained relations between our City's bicyclists and the PPB, and they hope instead to see such relations improve. All they want is for these citations to be dropped and for the matter to be over.

They are asking for your help. Please contact Officer Pryce and ask him to consider recommending to the court, at the hearings for these citations, that they be dismissed. This will



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adequately address the inequity of the situation and show the community that bicyclists will not be punished for riding legally on the streets of Portland. Here's how you can reach Officer Pryce:

Officer Jimmy Pryce, OFC #34677
Northeast Precinct
Bureau of Police
449 NE Emerson
Portland, OR 97211
Main: 503-823-5700
Fax: 503-823-5840
Cell: 503-545-3466

Despite their willingness to end this matter with a dismissal of the citations, if Officer Pryce does not make such a recommendation to the court, Mr. Vyn and Mr. Welte will take legal action. These actions will include filing citizen-initiated citations, filing a complaint with the PPB's Independent Police Review Division, submitting a Driver Evaluation Form to the Department of Motor Vehicles, and other action as necessary to ensure that Officer Pryce is held accountable for his conduct.



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Thank you for considering this request.

Very truly yours,

Christopher M. Heaps

cc: Officer J. Pryce, OFC #34677
Northeast Precinct
Bureau of Police
449 NE Emerson
Portland, OR 97211

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